

1           IN THE UNITED STATES DISTRICT COURT  
2           FOR THE EASTERN DISTRICT OF PENNSYLVANIA  
3           CASE NO. 02-CV-2733 (HB)  
4

5           \_\_\_\_\_  
6           CONSTELLATION NEWENERGY, INC.,

7                               Plaintiffs,

(Videotaped)

8                               Oral Deposition of:

9                               vs.

DAVID McGEOWN

10           POWERWEB TECHNOLOGIES, INC.,  
11           et al.,

12                               Defendants.

ORIGINAL

13                               \* \* \* \* \*

14                               Thursday, February 26, 2004

15                               \* \* \* \* \*

16           Transcript in the above matter taken at the  
17           offices of Wolf Block, 101 Eisenhower Parkway,  
18           Roseland, New Jersey, commencing at 10:17 a.m.,  
19           before Seva Flicstein, Certified Shorthand  
20           Reporter, Registered Merit Reporter, Certified  
21           Realtime Reporter, a Notary Public of the State of  
22           New Jersey.

23                               CERTIFIED SHORTHAND REPORTING SERVICES

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1 the engine sizes. But I think that was primarily  
 2 Budike and Jim Curnyn worked on that.  
 3 Does that answer your question?  
 4 Q. Thank you very much.  
 5 Do you recall submitting a proposal  
 6 like this to Bell Atlantic?  
 7 A. I did not.  
 8 Q. Do you recall anyone else doing  
 9 that?  
 10 A. I believe Jim Curnyn did.  
 11 Q. Do you know whether it was actually  
 12 handed to someone at Bell Atlantic at a meeting or  
 13 sent by mail or how it was delivered?  
 14 A. I believe all of those. But I  
 15 believe the venue was Team Energy.  
 16 Q. So this was a meeting of people from  
 17 various parts of Bell Atlantic?  
 18 A. I believe at that point Team Energy  
 19 had final control. Rod Sluyter had taken it up to  
 20 the senior vice president of whatever that was the  
 21 number two or number three. And they may even have  
 22 been starting to call themselves Verizon at that  
 23 stage. And had gotten some approvals from him.  
 24 And this may have been the seminal document he was  
 25 trying to get result to a contract.

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1 Q. Did you attend the meeting at Team  
 2 Energy that you just described?  
 3 A. I attended multiple Team Energy  
 4 meetings. I missed multiple Team Energy meetings.  
 5 It wouldn't necessarily have been relevant that I  
 6 would have attended this one.  
 7 Q. What did Bell Atlantic decide  
 8 regarding this proposal?  
 9 MR. WHITE: Objection.  
 10 A. If I may recharacterize, with regard  
 11 to our proposal, which this probably reasonably  
 12 represents but I don't know if this specifically  
 13 was examined in detail --  
 14 Q. I will accept that revision.  
 15 A. The senior vice president with whom  
 16 we had to go up to approved the program, and gave  
 17 an instruction that this program is going to work.  
 18 And I remember clearly that the rub was he had to  
 19 instruct a different team that was not part of Team  
 20 Energy called the generator guys to participate.  
 21 And that was the rub, instructing  
 22 them to participate.  
 23 Q. Who were the generator guys?  
 24 A. The responsibility for the operations  
 25 of -- does the phrase "CO" make sense? CO is that

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1 switching center? Central Office, that's what it's  
 2 called, where the switch gear is that we were  
 3 planning to turn the generators on and off.  
 4 Team Energy was in an advisory  
 5 capacity only, not an execution capacity. Thus,  
 6 the generator guys were part of another division  
 7 that I believe was called Operations. I'm not  
 8 sure. That was their function. And Team Energy  
 9 could not instruct the generator guys.  
 10 Q. So how was it expected that this  
 11 would be brought about?  
 12 A. That from the instruction from the  
 13 head cheese, the senior vice president, that Team  
 14 Energy would approve the deal. Somebody in Team  
 15 Energy, probably Jeremy Metz, would be the contract  
 16 point of contact.  
 17 And that moving forward, we would  
 18 have generator guys in Operations that would  
 19 somehow be notified in the event that we were going  
 20 to execute a curtailment call, that they had to go  
 21 to the site and turn the generators on.  
 22 Q. Once that decision had been made,  
 23 what was the next step that was expected to occur?  
 24 MR. WHITE: Objection. You may  
 25 answer.

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1 A. Somewhere in Bell Atlantic we were  
 2 going to put the operational stuff together of what  
 3 sites, who, and how do we communicate with them to  
 4 make the program work. Oh, pardon me.  
 5 The next step, somebody was going to  
 6 sign a contract.  
 7 Q. Did that happen?  
 8 A. To my knowledge, no.  
 9 Q. Why not?  
 10 A. Because it is my understanding that  
 11 one of the generator guys wrote to the regional  
 12 Environmental Protection Agency to seek  
 13 clarification that if they ran their diesel  
 14 generators during a summer peak for profit, would  
 15 that be okay.  
 16 And the regional EPA guy sent a very  
 17 swift memo back telling Bell Atlantic that they  
 18 would be treated as an electric utility, and thus,  
 19 all their permits would be invalidated.  
 20 Q. Was this an official in New Jersey?  
 21 A. I don't know if it was a New Jersey  
 22 guy or the New York guy. It didn't really matter.  
 23 It was dead at that point.  
 24 Q. Was any effort made to try to solve  
 25 that problem?

39 (Pages 150 to 153)

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1 A. Other than begging, pleading? Yes,  
2 multiple efforts were made to try and get around  
3 it. But at that point the operations team had an  
4 official letter. And they sat back, that was it.

5 Q. Did that occur sometime in year  
6 2000?

7 A. I'm pretty sure -- it had to occur  
8 about the time of the proposal. It was all 2000.  
9 By inference, yes.

10 Q. Was anything done with Bell  
11 Atlantic -- by "anything" I mean some sort of  
12 curtailment program -- at all in the year 2000?

13 A. I believe the answer is no.

14 Q. Was anything done like that with Bell  
15 Atlantic in the year 2001?

16 A. I don't know the answer to that.  
17 Pretty sure it's -- I'm pretty sure the answer is  
18 no.

19 Q. Was there a program in New York done  
20 with Bell Atlantic for curtailment?

21 A. There was a program in New York. I  
22 don't think Bell Atlantic participated. I think we  
23 tried. We didn't get it.

24 Q. Are you sure about that? Or you're  
25 not sure?

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1 A. I can remember trying. I can  
2 remember talking about facilities in New York, as  
3 we tried to resurrect the deal and keep something  
4 going. I remember we tried hard. But I don't  
5 think they participated in the end.

6 Q. Do you remember NewEnergy doing  
7 anything with Bell Atlantic in the year 2002?

8 A. No. Not to my knowledge. With  
9 regard, again, to programs of this nature.

10 Q. I am showing you what has been marked  
11 as Exhibit Powerweb-20.

12 Have you seen this before?

13 A. No.

14 Q. For the record, it's titled  
15 "Agreement for Customer Curtailment of Electricity  
16 Under the PJM Customer Load Reduction Pilot  
17 Program." It appears to be entered into between  
18 Amboy Aggregates and NewEnergy.

19 And -- I don't see an offerings date  
20 on it, but there is a fax on the back that has a  
21 header, July 26, 2000.

22 Do you know whether any sort of  
23 curtailment agreement was entered into with Amboy  
24 Aggregates and NewEnergy?

25 A. No, I don't.

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1 Q. Do you know whether NewEnergy entered  
2 into any curtailment contracts with any customers  
3 in the year 2000?

4 A. I believe the answer is they did.

5 Q. What customers?

6 A. I don't recall.

7 Q. Do you recall whether that was done  
8 in the PJM?

9 A. No, I don't.

10 Q. Do you recall whether it was done in  
11 the New York ISO?

12 A. Yes, I do.

13 Q. Do you recall the customers there?

14 A. No. There is only a handful. I  
15 don't recall specifically who did sign up.

16 Q. Do you know whether it was done in  
17 any other regions of NewEnergy?

18 A. I don't know -- California program  
19 came and went. I believe there was probably  
20 something in California. I'm pretty sure there was  
21 something in Chicago.

22 MR. GARCIA: Would you mark this,  
23 please.

24 (Exhibit Powerweb-214, Request for  
25 advice on the purchase of Energy Tracking, Inc.,

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1 Bates stamped NE005843 through NE005849, was marked  
2 for identification.)

3 Q. (BY MR. GARCIA:) I am showing you  
4 what has been marked as Exhibit PW-214. It appears  
5 to be a request for advice on the purchase of  
6 Energy Tracking, Inc.

7 Have you seen this before?

8 A. Yes.

9 Q. It says, "Please respond to Robert  
10 Morgan or David McGeown at AES NewEnergy by  
11 August 25, 2000."

12 Did you have a role in preparing  
13 this?

14 A. Yes.

15 Q. What was your role?

16 A. I believe I was the author.

17 Q. And were you recommending the  
18 purchase of Energy Tracking?

19 A. Yes, I was.

20 Q. What type of technology did Energy  
21 Tracking have?

22 MR. WHITE: Objection; overly broad.  
23 You may answer.

24 A. Web-based information services and  
25 metering equipment to go with it.

40 (Pages 154 to 157)